82-858

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No. .....

In the Supreme Court of the United States

OCTOBER TERM, 1982

WAYNE N. HOWARD and MICHAEL E. TRAUSCHT,
Petitioners and Cross-Respondents,

v.

WALTER ROBERT TAYLOR,
Respondent and Cross-Petitioner.

CROSS-PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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November, 1982

QUESTIONS PRESENTED FOR REVIEW

1. Is the "color of state law" requirement of 42 U.S.C. § 1983 satisfied by the "state action" of a state court's ordering violation of a citizen's First and Fourteenth Amendment rights?

2. In ascertaining what is and is not "state action", is state court action enforcing racially restrictive covenants distinguishable from state court action committing an adult citizen to the custody of another to be "counseled", "examined" and "treated" and his will?

3. Does the history of 42 U.S.C. § 1983 indicate that it should be applied to prevent the use of state courts to injure citizens and that it should be applied to enforce provisions of the Constitution against all state action, whether legislative, executive or judicial?

4. Is the action of conspirators in using a state court "temporary guardianship" order to take and retain custody of an adult citizen to abuse him mentally and to force him to change his religion and lifestyle, "misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with authority of the state"?

5. Is the power and authority stated in and exercised under a state court "temporary guardianship" order providing for confinement, "counseling", "examination" and "treatment" of an adult citizen, "power possessed by virtue of state law and made possible only" as a result of "being clothed with authority of the state"?

6. Is such action (Questions 4 and 5) merely the action of private individuals akin to filing a complaint, testifying at trial and being on the winning side of a law-

suit, or is it the exercise of apparent authority and power of the state in the form of the "temporary guardianship" order?

7. Do private citizens have the apparent authority to confine, "counsel", "examine" and "treat" another adult citizen against his will, or is such apparent authority only exercisable through color of law?

8. Is the action of private persons in confining, "counseling", "examining" and "treating" another citizen against his will pursuant to a court order so impregnated with governmental character as to become subject to the constitutional limitations placed upon state action?

9. If a state court proceeding is a nullity, is there "color of law" under 42 U.S.C. § 1983 when conspirators misuse the state judicial process with the specific intent of depriving a citizen of his liberty without due process, equal protection of the laws and other rights guaranteed by the Constitution?

PARTIES

The parties in the United States Court of Appeals for the Tenth Circuit were: Walter Robert Taylor, appellant, and Kevin M. Gilmartin, Michael E. Trauscht, Wayne N. Howard, The Freedom of Thought Foundation, Inc., Joseph Alexander, Esther Alexander and Gary Scharff, appellees. It is urged by Petitioners that all of these parties have an interest in the filing of their petition.

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Respondent and Cross-Petitioner.

CROSS-PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Walter Robert Taylor, Respondent and Cross-Petitioner, prays that, in the event a writ of certiorari should issue to the United States Court of Appeals for the Tenth Circuit to review that part of its July 30, 1982 judgment which reversed the Trial Court's December 30, 1978 and December 29, 1979 orders granting partial summary judgment against Respondent and Cross-Petitioner and dismissing his claim based upon 42 U.S.C. § 1985, then in such event Respondent and Cross-Petitioner prays that a writ of certiorari issue to the United States Court of Appeals for the Tenth Circuit to review that part of its July 30, 1982 judgment which affirmed the Trial Court's December 30, 1978 and July 8, 1980 orders granting partial summary judgment against Respondent and Cross-Petitioner and dismissing his claim based upon 42 U.S.C. § 1983.

OPINIONS BELOW

The December 30, 1978 order of the United States District Court for the Western District of Oklahoma which granted partial summary judgment against Respondent and Cross-Petitioner dismissing his claim based upon 42 U.S.C. § 1983 is reproduced in the Appendix to Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit ("Appendix to Petition") filed by Petitioners and Cross-Respondents Wayne N. Howard and Michael E. Trauscht. The July 8, 1980 order of the United States District Court for the Western District of Oklahoma granting partial summary judgment against Respondent and Cross-Petitioner dismissing his claim based upon 42 U.S.C. § 1983 is reproduced in the Appendix to this Cross-Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit. The opinion of the United States Court of Appeals for the Tenth Circuit which affirmed those orders granting partial summary judgment against Respondent and Cross-Petitioner on his 42 U.S.C. § 1983 claim is reproduced in the Appendix to the Petition filed by Petitioners and Cross-Respondents. It has not yet been reported in the official reporter.

JURISDICTION

The judgment of the United States Court of Appeals for the Tenth Circuit sought to be reviewed is dated and was entered July 30, 1982. Respondent and Cross-Petitioner relies upon *Sup. Ct. R.* 19.5. Petitioners' petition for certiorari was received by counsel for Respondent and Cross-Petitioner October 21, 1982. The statutory provision believed to confer on this Court jurisdiction to review the judgment in question is 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

United States Code, Title 42

Section 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit in equity, or other proper proceeding for redress."

STATEMENT OF THE CASE

Plaintiff and Cross-Petitioner here is a monk who resides at an Old Catholic Monastery in a suburb of Oklahoma City. He was taken against his will from his monastery by Oklahoma County Sheriff's Deputies to a hearing before the District Court of Oklahoma County, State of Oklahoma, for a "temporary guardianship" hearing July 15, 1976. At the time he was 21 years old. Defendants sought Plaintiff's removal from his monastery in order that he could be "deprogrammed", a process which involves use of "confrontative" techniques of "counseling" with the goal of the "deprogrammee's" renunciation of his religious beliefs.

On July 14, 1976, lawyers for the applicant in the "temporary guardianship" proceeding conferred with the Associate District Judge to whom the application was eventually presented, Judge John A. "Tony" Benson, who then contacted the Probate Judge and requested that he be allowed to hear the matter. The "temporary guardianship"

proceeding was then filed. Judge Benson then conducted a hearing July 15, 1976, without notice to Plaintiff, and wholly in Plaintiff's absence which culminated in Judge Benson's ordering the Plaintiff taken into custody. Judge Benson had decided to order that a temporary guardian of Plaintiff's person be appointed so that it could be determined if Plaintiff were under the influence of a religious cult. Judge Benson stated that he wanted the Plaintiff taken into custody "so that [Plaintiff] could be given notice of a [permanent] guardianship hearing. . . ."

Upon Plaintiff's being taken to the Oklahoma Court, his counsel of choice was excluded from the hearing, and at the close of the "temporary guardianship" hearing, the same day Plaintiff was picked up by sheriff's deputies, Judge Benson, though finding that Plaintiff appeared "normal in every respect", formally entered an "Order Appointing Temporary Guardianship of the Person" because, according to Judge Benson:

> ". . . the right of [Plaintiff's] father and . . . family to know [Plaintiff] decided . . . to spend the rest of [his] life away from them secluded in a monastery . . . probably overrides any individual right [Plaintiff] might possibly have on a temporary basis . . . to be free from . . . custody."

The July 15, 1976 order provided:

> "1. Notice of the time and place of hearing is not required.
>
> 2. Dr. Walter Taylor is appointed the temporary Guardian of the Person of Petitioner's child, to-wit: Walter Robert Taylor and that temporary Letters of Guardianship issue.

3. The Temporary Guardian of the person shall have power to: (a) take said proposed ward into Petitioner's personal custody to have proposed ward counselled, examined, and treated by persons including, but not limited to physicians, psychiatrists, psychologists, social workers and lay persons; (b) to keep said ward in Petitioner's custody, even in the event said ward wishes to leave said custody; and (c) such further powers as are necessary to exercise those above granted.

4, Further hearing in this matter will be held at August 13, 1976 at 3:00 P.M. at which time the ward is directed to show cause if any the ward has, why the Petitioner, Dr. Walter Taylor should not be appointed permanent Guardian of the ward's person. . . . "

On authority of Judge Benson's "temporary guardianship" order (hereafter "Judge Benson's Order"), Plaintiff was taken that same day, July 15, 1976, from Oklahoma City, Oklahoma, to Akron, Ohio. He was held for approximately one week in Akron where he was kept at a motel under constant guard. There he underwent "deprogramming": (1) "deprogrammers" yelled at him constantly; (2) they kept fresh "deprogrammers" yelling at him by switching off in crews; (3) they said they would have him tracked down by the state patrol if he escaped, and that they would have him thrown in jail and "deprogrammed" in jail; (4) the "deprogrammers" threatened to have the police close down Plaintiff's monastery, to have the "temporary guardianship" made permanent and have the "deprogramming" continue indefinitely, to have Plaintiff committed to a mental institution and to beat him; (5) he was deprived of sleep and by innuendo he was told that he

would be subjected to shock treatment; (6) he suffered severe gastritis, diarrhea and abdominal cramping, and when he complained, the "deprogramming" seemed to intensify; (7) they threw cold water on him, shined a light in his eyes, tore his monastic clothes off him, and cut his hair and beard; (8) they told him they called friends and religious leaders from a list Plaintiff had given them of people who would vouch for him, and they stated that the friends reported his religion was not legitimate. The "deprogrammers" indicated the pressure would cease if Plaintiff would renounce his religion.

July 22, 1976, the District Court of Oklahoma County, acting through a different judge than Judge Benson, entered an order declaring Judge Benson's Order void ab initio which commanded Plaintiff's return to Oklahoma City. July 23 or July 24, 1976, Plaintiff was taken from Akron to Phoenix, Arizona, where he was held, still under guard, for the "rehabilitation" phase of the "deprogramming". He escaped July 31, 1976, and returned to Oklahoma City.

Plaintiff brought the instant action against the "deprogrammers", his parents and brother seeking $300,000.00 compensatory and $3,000,000.00 punitive damages. Jurisdiction was based upon 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1332 (diversity of citizenship), 28 U.S.C. § 1343 (3) and 28 U.S.C. § 1343(1) (civil rights). Pursuant to agreement Plaintiff's parents and brother were dismissed prior to trial. Plaintiff sought relief on the basis of a civil conspiracy and specific legal theories which included violation of civil rights under 42 U.S.C. §§ 1983 and 1985(3), obstruction of justice under 42 U.S.C. § 1985(2), intentional

infliction of emotional distress, false imprisonment and assault and battery. He stated in his Complaint that "Defendants conspired to and did, under color of law deprive Plaintiff of liberty . . . to coercively induce an alteration in Plaintiff's religious beliefs and practices", and that Defendants acted "under color of law through use of the judicial system, court orders and actions of the Sheriff's office. . . ." Plaintiff did not allege that either Judge Benson or the Sheriff's deputies who arrested him were co-conspirators of Defendants.

The Trial Court granted partial summary judgment against Plaintiff dismissing his 42 U.S.C. § 1983 count on the basis that the requisite color of state law was not present. It granted partial summary judgment against Plaintiff dismissing the 42 U.S.C. § 1985(3) count because it concluded that Plaintiff's action did not allege deprivations which would give rise to Congressional authority to reach private conspiracies. It granted partial summary judgment against Plaintiff dismissing his 42 U.S.C. § 1985(2) count on the basis that a source of Congressional power to reach the private conspiracy alleged could not be identified.

Trial of the action was to a jury. At the close of the evidence the court directed a verdict against Plaintiff on his false imprisonment claim on the basis that Judge Benson's Order was a "proper" order. The court also directed a verdict against Plaintiff on the intentional infliction of emotional distress claim, holding that the court was required in the first instance to determine whether Defendants' conduct was so "extreme" and "outrageous" as to permit recovery, and in the instant action, reasonable minds

could not differ: Defendants' conduct was not so "extreme" and "outrageous" as to permit the question to be submitted to a jury. The case then went to the jury solely on the theory of conspiracy to assault and batter. The jury returned a verdict in favor of the Defendants and against Plaintiff, and the court entered judgment on the verdict.

Plaintiff perfected an appeal to the United States Court of Appeals for the Tenth Circuit which, by opinion dated July 30, 1982, reversed the Trial Court's grant of summary judgment and the Trial Court's directed verdicts and judgment on jury verdict, except the Trial Court's dismissal of Plaintiff's claim based upon 42 U.S.C. § 1983. The Tenth Circuit held that "The order dismissing the § 1983 claim must be affirmed." While holding that Plaintiff's Complaint alleged a conspiracy to induce the State to violate his First and Fourteenth Amendment rights, the Court of Appeals concluded that there was no action taken under color of state law because the State of Oklahoma had merely furnished a forum to private litigants. Defendants then sought review by this Court of the Tenth Circuit's reversal of the Trial Court's grant of summary judgment dismissing Plaintiff's 42 U.S.C. § 1985 claims.

REASONS FOR GRANTING THE WRIT

This Cross-Petition should be granted because the United States Court of Appeals for the Tenth Circuit has decided a federal question in a way which conflicts with applicable decisions of this Court and because the Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court. The Court of Appeals' decision, while correctly holding that there was "state action" in the deprivation of rights secured by the First and Fourteenth Amendments to the Constitution, conflicts with applicable decisions of this Court in finding that the "state action" was not taken under "color of state law". The decision of the Court of Appeals conflicts with applicable decisions of this Court because it incorrectly found an absence of "color of state law", notwithstanding a misuse of power possessed by virtue of state law and made possible only because the wrongdoer was clothed with the authority of the State. The decision of the Court of Appeals that Defendants did not act under "color of state law" conflicts with applicable decisions of this Court because the involuntary "counseling", "examining" and "treating" of an adult is so impregnated with governmental character as to be subject to constitutional limitations. The Court of Appeals holding that Defendants did not act under "color of state law" where otherwise private individuals misused a state judicial proceeding which was a nullity for the purpose of effecting constitutional deprivations is incorrect and involves an important question of federal law which has not been, but should be, settled by this Court.

I. THE COURT OF APPEALS' DECISION, WHILE CORRECTLY HOLDING THAT THERE WAS "STATE ACTION" IN THE DEPRIVATION OF RIGHTS SECURED BY THE FIRST AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION, CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT IN FINDING THAT THE "STATE ACTION" WAS NOT TAKEN UNDER "COLOR OF STATE LAW".

Although finding that Plaintiff properly alleged that his First and Fourteenth Amendment rights were violated through "state action", the Circuit Court held that the "state action" was not taken under "color of law". Slip Opinion at 18-19, 26-32. That holding conflicts with applicable decisions of this Court.

A 42 U.S.C. § 1983 claim embodies at least two elements: (1) deprivation of a right secured by the Constitution and laws of the United States; (2) "under color of law". *Flagg Bros., Inc.* v. *Brooks*, 436 U.S. 149, 155 (1978), *Adickes* v. *S. H. Kress & Co.*, 398 U.S. 144, 150 (1970). Although this Court held in *Flagg Bros., Inc.* v. *Brooks*, 436 U.S. at 156-57, that action taken "under color of state law" does not entail deprivation of a right secured by the Constitution and laws of the United States when there is no state action, this Court has never found absence of "color of state law" where there was "state action" in the form of governmental deprivation of a First or Fourteenth Amendment right. On the contrary, ". . . conduct satisfying the state action requirement of the Fourteenth Amendment satisfies the statutory requirement of action under color of state law. . . ." *Lugar* v. *Edmondson Oil Co.*, 102 S.Ct. 2744, 2753, n. 18 (1982).

Although holding that there was no "color of law", the Circuit Court held:

> ". . . [A]lthough . . . [Plaintiff] does not claim that the state conspired to deprive him of his constitutional right, he does claim that the state unwittingly deprived him of those rights when the Sheriff's deputies forced Taylor to appear before Judge Benson under no apparent statutory authority and when the state court appointed his father temporary guardian without any jurisdiction, whereby he was illegally delivered over to the defendants and was deprived of his freedom of association and his freedom to pursue his religious beliefs. We must hold that a private conspiracy, if this be such, motivated by a class-based, invidiously discriminatory animus, to induce *the state to violate one's first and fourteenth amendment rights is remedied by* §§ 1985(2) and (3)."

Emphasis supplied. Slip Opinion at 31-32.

The Tenth Circuit's analysis below that there was "state action" is consistent with this Court's conclusion that judicial enforcement of racially restrictive covenants constitutes Fourteenth Amendment "state action":

> "The difference between judicial enforcement and non-enforcement is the difference between being denied rights . . . and being accorded full enjoyment of those rights on an equal footing."

Shelley v. *Kraemer,* 334 U.S. 1, 19 (1948).

Plaintiff's deprivation of liberty, freedom of association and freedom of religion were caused by the exercise of a putative state right or conduct imposed by the State in the form of Judge Benson's order. Defendants and Plaintiff's "temporary guardian" as authorized by, and act-

ing in accordance with, Judge Benson's order acted with state officials — Judge Benson and Oklahoma County Sheriff's deputies — or obtained significant aid from them. In conspiring with Plaintiff's "temporary guardian", Defendants were thus "state actors". *See Lugar* v. *Edmondson Oil Co.*, 102 S.Ct. at 2754.

The Court of Appeals' conclusion that there was no action taken under "color of state law" because the State merely furnished a forum or allowed itself to be used by the conspirators conflicts with applicable decisions of this Court and is inconsistent with the legislative history of 42 U.S.C. § 1983. The Civil Rights Act of 1871 does not provide an exemption or "safe harbour" for state action through judicial process. To the contrary, all state action, whether executive, legislative or judicial, may be reached under 42 U.S.C. § 1983. *Supreme Court of Virginia* v. *Consumers Union*, 446 U.S. 719, 735, n. 14 (1980), citing *Ex Parte Virginia*, 100 U.S. 339, 346 (1880). One of the evils which was to have been addressed by 42 U.S.C. § 1983 was the use of state courts to harass and injure citizens. *Id.* 42 U.S.C. § 1983 does not require that a judge be a conspirator as a prerequisite to relief for First and Fourteenth Amendment violations perpetrated under authority of a state court. Such a requirement would thwart the remedial purpose of the statute. That is the effect of the judgment of the Court of Appeals. Though finding "state action", it held that there was no "color of law" contrary to this Court's decision in *Lugar* v. *Edmondson Oil Co.*, *supra*.

The Tenth Circuit's response to the pronouncements of this Court in *Lugar* v. *Edmondson Oil Co.* is that *Lugar* is

distinguishable because Plaintiff does not contend that the Oklahoma guardianship statute is constitutionally defective. Slip Opinion at 19-20 n. 3. That factual analysis is correct, but it does not effectively distinguish the rationale of *Lugar* because Defendants acted under putative state authority in the form of Judge Benson's order which clearly authorized the constitutional violations. Plaintiff has specifically challenged the constitutionality of Judge Benson's order which facially provided state authorization for Defendants to "deprogram" Plaintiff thereby violating his First and Fourteenth Amendment rights.

II. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT BECAUSE IT INCORRECTLY FOUND AN ABSENCE OF "COLOR OF LAW", NOTWITHSTANDING A MISUSE OF POWER POSSESSED BY VIRTUE OF STATE LAW AND MADE POSSIBLE ONLY BECAUSE THE WRONGDOER WAS CLOTHED WITH THE AUTHORITY OF THE STATE.

Action taken under "color of law" as prescribed by 42 U.S.C. § 1983 is defined as

> "Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of the state. . . ."

Monroe v. *Pape*, 365 U.S. 167, 184 (1961), *United States* v. *Classic*, 313 U.S. 299, 326 (1941).

Defendants took and retained custody of Plaintiff under Judge Benson's order for the purpose of forcing him to change his religion by means of mental abuse. The District Court of Oklahoma County contemplated "deprogram-

ming" Plaintiff. As the Trial Judge observed: "[Judge Benson] knew what this was about, knew what was going to happen, had this presented to him, as it's in the record and his order says as much." When Defendants took Plaintiff for "deprogramming", they misused power, "possessed by virtue of state law and made possible only" through the cloak of state authority in the form of Judge Benson's order. The power and authority which Defendants exercised under Judge Benson's order for confinement, "counseling", "examination" and "treatment" of Plaintiff was "power possessed by virtue of state law and made possible only" as a result of Plaintiff's father and guardian, Defendants' co-conspirator, "being clothed with authority of the state."

Plaintiff's "temporary guardian", Defendants' co-conspirator, possessed power by virtue of state law in the form of Judge Benson's order. Guardianship powers are so identified with the State that since feudal times they have been viewed as an incident of sovereignty. Guardianship powers stem from the "royal prerogative" because the King as "father of the country" functioned as guardian of all persons under a legal or mental disability. "In the United States, the 'royal prerogative' and the 'parens patriae' function of the King passed to the states." *Hawaii* v. *Standard Oil Co.*, 405 U.S. 251, 257 (1972); *See McIntosh* v. *Dill*, 86 Okl. 1, 205 P. 917, *cert. denied*, 260 U.S. 721 (1922).

Defendants did not merely resort to the courts for the adjudication of a claim and win their case. They assumed the apparent power of the State in the form of Judge Benson's order to force Plaintiff to change his religion. Private citizens do not have the apparent authority to con-

fine, "counsel", "examine" and "treat" another adult citizen against his will. Such apparent authority is only exercisable through color of law.

III. THE DECISION OF THE COURT OF APPEALS THAT DEFENDANTS DID NOT ACT UNDER "COLOR OF STATE LAW" CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT BECAUSE THE INVOLUNTARY "COUNSELING", "EXAMINING" AND "TREATING" OF AN ADULT IS SO IMPREGNATED WITH GOVERNMENTAL CHARACTER AS TO BE SUBJECT TO CONSTITUTIONAL LIMITATIONS.

The action of private persons in confining, "counseling", "examining" and "treating" another adult citizen against his will pursuant to a court order is "so impregnated with governmental character as to become subject to constitutional limitations placed upon state action." *Cf. Evans* v. *Newton*, 382 U.S. 296, 299 (1966) (private devise of realty in trust to a city for a "public" park for white people only). In order for nominally private action to be deemed a governmental function the nominally private conduct must fulfill a function "exclusively reserved to the state." *Flagg Bros., Inc.* v. *Brooks*, 436 U.S. at 157-58, quoting *Jackson* v. *Metropolitan Edison Co.*, 419 U.S. 345, 352 (1974). Because Plaintiff's father was to perform a function unlike an ordinary guardian, the governmental function test was met.

To restate the obvious, only the State can involuntarily confine and "treat" an adult. The only way for an adult to be confined and "treated" is for the entity confining and "treating" to act as the government acts. Unlike the *Flagg Brothers* situation, there is not a variety of

ways to involuntarily confine and "treat" an adult. The function of involuntary confinement and treatment is that of the State. *See Addington v. Texas*, 441 U.S. 418, 426 (1979). It is, and must be, exclusively the function of the state.

IV. THE COURT OF APPEALS HOLDING THAT DEFENDANTS DID NOT ACT "UNDER COLOR OF STATE LAW" WHERE OTHERWISE PRIVATE INDIVIDUALS MISUSED A STATE JUDICIAL PROCEEDING WHICH WAS A NULLITY FOR THE PURPOSE OF EFFECTING CONSTITUTIONAL DEPRIVATIONS IS INCORRECT AND INVOLVES AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

In examining whether misuse of the judicial process could ever be action under "color of law", the United States Court of Appeals for the Tenth Circuit, speaking through the late Judge Murrah, stated in dictum:

> "It is conceivable that persons, either individually or acting in concert might so use the state judicial process as to deprive a person of his property without due process of law, or of equal protection of the laws, yet we are certain that to make out a cause of action under the Civil Rights Statutes, the State Court proceedings must have been a complete nullity, with a purpose to deprive a person of his property without due process of law."

Bottone v. *Lindsley*, 170 F.2d 705, 707 (10th Cir. 1948), *cert. denied*, 336 U.S. 944 (1949). Obviously, the statement would apply with equal force to deprivations of liberty, free exercise of religion and freedom of association. The question is one of first impression.

When nominally private parties are allowed to so misuse the judicial process, they are exercising power that ordinary private litigants do not possess. In such a case the state does more than merely furnish a forum to them. Where the state acts in the absence of all jurisdiction in complicity with nominally private litigants' purpose of depriving a citizen of constitutionally protected liberties and does order such deprivation, the state is no longer disinterested. In such a case the state has become inextricably entangled in the nominally private defendants' actions so as to transform them into state actors.

As the Trial Court found: "Judge Benson knew what this was about, knew what was going to happen, had this presented to him, and it's in the record and his order says as much." The Trial Court further observed "[Judge Benson's] . . . order was to separate . . . [Plaintiff] from the sect, not let him communicate with the sect. That's what the Judge intended and that's what the order says." When the State of Oklahoma took such action without any jurisdiction [see Slip Opinion at 8-11, 13; *see also Mullane* v. *Central Hanover Bank & Trust Co.*, 399 U.S. 306 (1950), *Pennoyer* v. *Neff*, 95 U.S. 714, 752 (1878)], it did not treat the proceeding as just another lawsuit where it merely furnished a forum. It became "interested" as a result of Judge Benson and Defendants' radical departure from the ordinary judicial process in ordering Plaintiff's "deprogramming". The State of Oklahoma clothed Plaintiff's father and Defendants with its authority in a way that ordinary citizens never are. The fact that Judge Benson's role may have been that of an ignorant participant in Defendants' scheme, as opposed to a purposeful participant

in the conspiratorial sense, does not disentangle the state's involvement.

CONCLUSION

For these reasons Walter Robert Taylor, Respondent and Cross-Petitioner, prays that, in the event a writ of certiorari should issue to the United States Court of Appeals for the Tenth Circuit to review that part of its July 30, 1982 judgment which reversed the Trial Court's December 30, 1978 and December 29, 1979 orders granting partial summary judgment against Respondent and Cross-Petitioner and dismissing his claim based upon 42 U.S.C. § 1985, then in such event Respondent and Cross-Petitioner prays that a writ of certiorari issue to the United States Court of Appeals for the Tenth Circuit to review that part of its July 30, 1982 judgment which affirmed the Trial Court's December 30, 1978 and July 8, 1980 orders granting partial summary judgment against Respondent and Cross-Petitioner and dismissing his claim based upon 42 U.S.C. § 1983.

Respectfully submitted,

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November, 1982

CERTIFICATE OF SERVICE

The undersigned John C. McMurry, a member of the Bar of this Court and counsel of record for Walter Robert Taylor, Respondent and Cross-Petitioner herein, hereby certifies that on the 19th day of November, 1982, he caused to be served the foregoing Cross-Petition for Writ of Certiorari on all parties by mailing three copies thereof by First Class mail, postage prepaid, to each of their counsel of record, addressed as follows:

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